

27.01.2022
Item No.17.
Court No.6.
AB

(Via Video Conference)

**F.M.A. 863 of 2021
With
I A CAN 1 of 2021**

India Motor Parts & Accessories Ltd. & Anr.

Vs

The Kolkata Municipal Corporation & Others

Mr. Ajay Gaggar,
Mr. Uttiyo Mallick ...for the Appellants.

Mr. Ambar Nath Banerjee,
Ms. Leena Panja,
Mr. Subhrangsu Pandafor the K.M.C.

Mr. Arnab Chakraborty,
Ms. Pragya Bhowmickfor the Respdt. No.5.

By consent of the parties, the appeal and the application are taken up together for hearing.

The appellants by filing the present writ petition, before the learned Single Judge, challenged an order dated November 26, 2020, passed by the Municipal Commissioner, Kolkata Municipal Corporation.

It appears that a Coordinate Bench of this Court in an appeal being MAT 478 of 2020 had directed the said Commissioner to consider and dispose of the representation of the writ petitioners/appellants after giving all parties an opportunity of oral hearing, by a

reasoned order within two months from the date of communication of the order.

Pursuant to the said order, the Municipal Commissioner heard all the parties. He also relied upon a report of the Executive Engineer (Civil) Building, Borough VI.

The allegation of the appellants/writ petitioners against the respondent no.5 was that it obtained the sanction-plan by showing certain land to be its own, which actually belonged to the appellants. The appellants also alleged that a boundary declaration dated June 17, 2013, which was submitted by respondent no.5 before the Municipality for sanction of plan did not show the actual boundary of the relevant premises.

The said allegations were disputed by the respondent no.5. It was the case of the respondent no. 5 that the said declaration was made in respect of a boundary which was in existence for the last thirty-five years.

After taking into consideration the report of the Executive Engineer and after hearing all the parties, the Municipal Commissioner was of the opinion that no action under Section 397 of the Kolkata Municipal Corporation Act, 1980 was required to be taken against the relevant premises as there was no misrepresentation or fraudulent statement made by

the respondent no 5 in connection with obtaining the sanctioned plan.

The Municipal Commissioner in his said order dated November 26, 2020, found that the F.A.R in the sanction plan has been calculated on the basis of the relevant deed of conveyance and not on the basis of the land area mentioned in the boundary declaration.

The learned Single Judge dismissed the writ petition holding that the Writ Court is not the appropriate forum for adjudication or declaration of the title of the disputed portion of the plot of land, which the appellants claim to be theirs and there being several disputed questions of fact involved in the writ petition, the same could not be decided by the Writ Court. The learned Judge, however, granted liberty to the writ petitioners/appellants to approach the appropriate forum in accordance with law for redressal of their grievances, if so advised.

We do not see any infirmity in the order passed by the learned Single Judge. The grievance of the appellants relates to the disputed title of a land. The learned Single Judge rightly held that such dispute cannot be decided by a Writ Court.

The Municipal Commissioner found that the boundary declaration, for which the allegations of misrepresentation and fraud were levelled, was irrelevant for the sanctioned plan. The factual finding

of the Municipal Commissioner with regard to the F.A.R. granted by the sanctioned plan does not call for any interference in exercise of writ jurisdiction particularly when no jurisdictional error or procedural impropriety in the said order has been alleged by the appellants before us.

The learned Single Judge granted liberty to the appellants to challenge the order of the Municipal Commissioner before the appropriate forum. We do not see any reason to interfere with the said order.

Since we have not called for affidavits, the allegations in the stay petition are deemed not to be admitted by the respondents.

The appeal being FMA 863 of 2021 along with IA CAN 1 of 2021 are, accordingly, dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)